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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1993 Annual Access Tariff Filings	)	CC Docket No. 93-193
	)	
National Exchange Carrier Association	)	Transmittal No. 556
	)	
Universal Service Fund and Lifeline Assistance Rates	)	CC Docket No. 93-123
	)	
GSF Order Compliance Filings	)	

REBUTTAL

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SUMMARY

With this Rebuttal, BellSouth responds to the Oppositions to its Direct Case and shows that there is no need for the Commission to continue this investigation or to require BellSouth to modify its 1993 annual access tariff filing on the basis of any of the issues designated for investigation in this proceeding.

First, BellSouth shows that there is sufficient Commission precedent and evidence to support a finding that the two-prong test for exogenous cost treatment of the SFAS 106 TBO amounts is met. The rule change itself was outside the control of BellSouth, and there is reasonable and uncontradicted evidence in the record that not all of the TBO amounts are reflected in the GNP-PI.

Second, BellSouth shows that the existing price cap rules do not require or permit an add-back for either the prior year's sharing or low-end adjustment amounts. The Commission is bound by the existing rules in this proceeding and cannot require BellSouth to make any add-back adjustments.

Third, BellSouth has shown that it properly reflected the General Support Facilities rule change as an exogenous cost, and no commenter has disputed this fact.

Finally, BellSouth shows that the placement of the Line Information Data base per query charges in the local transport category is consistent with the existing rules.

Any change in the existing rules should await the Commission's upcoming review of the LEC price cap plan.

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REBUTTAL

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Rebuttal to Oppositions in the above-captioned investigation proceeding, instituted by the Commission in its Designation Order.[1]

The Commission is investigating several issues regarding the 1993 annual access tariff filings of various local exchange carriers ("LECs"), including BellSouth. BellSouth filed its Direct Case on July 27, 1993, and Oppositions or Comments have been filed by Ad Hoc Telecommunications Users Committee ("Ad Hoc"), Allnet Communication Services, Inc. ("Allnet"), American Telephone and Telegraph Company ("AT&T"), and MCI Telecommunications

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[1] 1993 Annual Access Tariff Filings, CC Docket No. 93-193, Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation (DA 93-762), released June 23, 1993.

Corporation ("MCI"). With this Rebuttal, BellSouth responds to the Oppositions and Comments.

I. Implementation of SFAS-106 Results in an Exogenous Cost Change for the TBO Amounts.

The commenters suggest that LECs, including BellSouth, have failed to prove that the implementation of SFAS-106 and the corresponding Transition Benefit Obligation ("TBO") amounts should receive exogenous cost treatment under the Commission's price cap rules. In doing so, they contend that LECs have failed to show that the two prongs of the Commission's exogenous cost treatment test are met. On the contrary, there is sufficient precedent and evidence in the record to support treatment of the SFAS-106 TBO amounts as exogenous.

As to the first prong of the test - whether the change is outside the control of LECs - no commenter has demonstrated that the implementation of the new accounting rule was within the control of LECs. Indeed, it is clear from the facts that the change was wholly outside the control of LECs: the Commission ordered LECs to abide by the change in accounting methodology.

The dispute here, therefore, lies in a disagreement as to what, exactly, must be outside the control of LECs for a change to be considered exogenous: the costs which are the subject of the rule or the rule change itself. BellSouth submits that the latter is the appropriate test. Indeed, such a test is exactly the case for the exogenous cost

treatment which the Commission has afforded to other changes such as separations rule changes. There is simply no reason that the Commission should depart from this standard. As BellSouth has stated previously, where separations rule changes are concerned, whereas the costs being separated may be within a LEC's control, it is the rule change itself (which affects the jurisdictional assignment of those costs) that is beyond a LEC's control. Similarly here, it is the change in accounting methodology from a "pay-as-you-go" basis to an accrual basis for post-retirement benefits other than pensions which is outside of BellSouth's control, not the level of benefits or underlying costs.

As stated previously,[2] BellSouth analyzed the SFAS-106 TBO in light of the OPRB Order.[3] BellSouth determined that there should be little question related to the definition of the benefits previously earned by employees who have already retired compared to the benefits of active employees. Therefore, for the sole purpose of the 1993 annual access tariff filing and to assure the greatest consistency with the OPRB Order and the criteria established therein,

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[2] BellSouth Telecommunications, Inc., Annual Access Tariff Filing, Transmittal No. 105, filed April 2, 1993, Volume 2, Supporting Information, pp. A-11 to A-12.

[3] Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, 71 Rad. Reg. 2d (P&F) 1160 (1993) ("OPRB Order"). Appeal pending sub nom, Southwestern Bell v. FCC, 93-1168 (D.C. Cir.).

exogenous treatment for only the retiree portion of the TBO was sought.

As to the second prong of the test - whether the change is reflected in the price cap formula - BellSouth has presented reasonable evidence in the record of the extent to which the change is not reflected in the formula. The Commission must take note of the fact that no commenter has shown that the amount which BellSouth has presented is wrong. Commenters merely speculate that the amount may not take into consideration certain factors.

Of no less significance is the fact that it would likely be impossible for anyone to arrive at an absolute value which could be attributed to the impact of SFAS-106 costs on the GNP-PI. This is due to the combined effect of the nature of the costs themselves and the change in accounting treatment. Nevertheless, a range of reasonableness can be determined, and that is just what the studies and other data presented by BellSouth demonstrate. Based upon this record evidence, the Commission can not reasonably conclude that all of the change will be reflected in the GNP-PI. There is simply no evidence that this is the case. On the contrary, the Commission, at a minimum, should accept the reasonable and conservative estimate of the Godwins study, whose range of reasonableness tends to be confirmed by the only other study in the record, the NERA study. The Commission has acted in other tariff proceedings

(where absolute amounts were unavailable) using cross-sectional, benchmark, and industry mean analyses to discern appropriate adjustments. The Commission cannot now find itself unable to allow at least a portion of the costs as exogenous here merely due to the fact that a single, absolute amount has not emerged.

II. In Evaluating LECs' Sharing and Low-End Adjustments, the Commission Must Follow the Existing Rules Which Require Calculation of the Rate of Return Without Add-Back of Prior Year's Sharing or Low-End Adjustments.

As BellSouth explained in its Direct Case, the Commission's present rules require LECs subject to price cap regulation to calculate their rates of return without any adjustment for the prior year's sharing. While AT&T supports this view, three of the commenters do not. In addition, two of these commenters contend that add-back is required for sharing amounts, but not for low-end adjustments.

BellSouth demonstrated in detail in its Comments filed in the Commission's related rulemaking proceeding,[4] that the existing price cap rules do not require an add-back adjustment. Under the Commission's prior regulatory regime, the Commission prescribed a rate of return. The Commission interpreted such a prescription as creating a "maximum

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[4] Price Cap Regulation of Local Exchange Carriers, Rate of Return Sharing and Lower Formula Adjustment, CC Docket No. 93-179 (FCC 93-325), ("NPRM"), Comments of BellSouth Telecommunications, Inc., filed August 2, 1993.

allowable rate of return."[5] The Commission determined that any earned rate of return in excess of the maximum allowable rate of return would be considered unlawful. It prescribed a refund mechanism that included an "add-back" requirement to enforce the rate of return prescription. Under price cap regulation, the price cap index and the sharing mechanism are prescribed, not a rate of return. Compliance with the PCI and the sharing mechanism constitute compliance with the prescription, and earned returns are irrelevant to the lawfulness of a carrier's rates.

The Commission recognized that changes were needed to accommodate price cap regulation and specifically delegated to the Common Carrier Bureau the authority to make the needed revisions to the earnings reporting mechanism, Form 492.[6] The Bureau made the revisions necessary to implement the price cap rules and released FCC Form 492A. Since "add-back" was not a part of the LEC price cap plan, the Bureau changed the form and properly did not include the "add-back" calculation that had been a part of Form 492 for rate of return carriers.

MCI's statement that "there has been no change in Form 492" for price cap purposes wholly ignores reality and is

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[5] See 47 C.F.R. §65.700.

[6] NPRM at para. 10, and Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990), ("LEC Price Cap Order") at para. 384.

contrary to fact. An analysis of the old FCC Form 492 and the new FCC Form 492A demonstrates this point. On both Form 492 and Form 492A, lines 1 thorough 5 are essentially identical, with line 1 representing actual revenues, unadjusted for refunds or add back. On line 6, Form 492 reports FCC ordered refunds in the base period.[7] Significantly, Form 492 then adds the refund amount to operating income (line 3) to calculate a "Net Return" on line 7. This figure is then used to calculate a new rate of return, including the add-back of refunds, on line 8. No such calculations exist on the revised form. Rather, on Form 492A the sharing/low end adjustment amount reported on line 6 is not used in any further calculations of rate of return. The only rate of return reported on Form 492A is that on line 5, which makes no use of the amount reported on line 6. This makes clear that add-back plays no part of the rate of return calculations for price cap LECs, and that MCI, Allnet and Ad Hoc are simply incorrect.[8]

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[7] Line 6 of Form 492A reports any sharing/low end adjustment amount for the base period.

[8] NYNEX's contention, made in its Reply Comments, at 15-18, filed September 1, 1993 in Docket 93-179, that sharing and lower formula adjustments must be added back on line 1 of Form 492A, similar to out-of-period billing adjustments, to "normalize" revenues is also incorrect. No instructions on the form, or otherwise, require the add-back of such amounts on line 1 or anywhere else on the form. Indeed, as explained above, although refunds and sharing and low-end adjustments are reported on line 6 of the old and new forms, respectively, Form 492A does not provide for or require any adjustments to be made to the rate of return

(continued...)

Furthermore, as AT&T points out, "the Cost Support Order for the annual access filing explicitly stated that '[carriers are required to base this year's sharing or low end adjustments on earnings in calendar year 1992' and directed the LECs to submit their Form [492A] earnings reports as part of the cost support for those filings."[9]

Any requirement that LECs add-back either prior year's sharing amounts or prior year's low-end adjustment amounts would thus be inconsistent with the existing rules. Despite the fact that the Commission has the authority in this proceeding to evaluate LECs' tariffs, it is bound to evaluate them based upon the existing rules. Regardless of whether the Commission ultimately determines that add-back requirements should be imposed, whether for prior year's sharing or low-end adjustments, as several of the commenters suggest, any change in the existing rules requires a proper rulemaking proceeding.[10] Furthermore, whether or not the Commission ultimately decides to change the existing rules,

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[8](...continued)
shown on line 5. This is in direct contrast to the line 7 calculation of a "Net Return" provided for on the old form, which is determined based upon an add-back of refunds.

[9] AT&T at 23-24, citing Commission Requirements for Cost Support Material To Be Filed with 1993 Annual Access Tariffs, 8 FCC Rcd. 1936 (1993), para. 24 and n. 30.

[10] Thus, the comments of MCI and Ad Hoc that add-back should be required for sharing but not for low-end adjustments are irrelevant here. A requirement to "add-back" would distort the actual earnings results that were obtained by a LEC whether the amount "added back" relates to sharing or low-end adjustments.

it cannot retroactively apply those new rules to the annual access tariff filings under review here, and no commenter has shown otherwise.[11]

III. BellSouth Properly Reallocated GSF Costs in Accordance with the Commission's Requirements.

As BellSouth stated in its Direct Case, it fully complied with the Commission's requirements for recognition of the GSF rule change as an exogenous cost. No commenter contends that BellSouth incorrectly allocated such costs or that BellSouth's handling is in any way contrary to Commission requirements. In fact, no commenter even addresses this issue. Therefore, there is no basis for the Commission to continue its investigation as to this matter, or to require BellSouth to make any changes.

IV. Placement of the LIDB Per Query Charges in the Local Transport Category Is Appropriate.

BellSouth has placed the Line Information Data Base ("LIDB") per query charges in the local transport category of the traffic sensitive basket. As BellSouth stated in its Direct Case, no contrary requirement has been established by the Commission.

None of the commenters shows otherwise. In fact, one commenter, Ad Hoc, agrees that the present rules permit the placement of the LIDB per query charges in the local

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[11] Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988); Bennett v. New Jersey, 470 U.S. 632, 639-40 (1985); Greene v. United States, 376 U.S. 149, 160 (1964); Rodulfa v. United States, 461 F. 2d 1240, 1247 (D.C. Cir. 1972).

transport category. Although Allnet contends that these charges more properly belong in the local switching category and AT&T contends that the charges should be placed in a new separate service category, any change should be accomplished through a rulemaking proceeding, as Ad Hoc suggests.

There should be no further disaggregation of the Commission's existing price cap service categories until the full ramifications can be considered as a part of the Commission's upcoming review of the LEC price cap plan. In the meantime, not only is the use of the local transport category not prohibited by the existing rules, but the policies underlying the Commission's price cap rules do not support the creation of a new service category. Under the approach adopted by the Commission in its price cap proceeding, a limited number of service categories were created in recognition of the need and desire for at least some pricing flexibility for LECs. This fundamental element of price cap regulation is diminished each time that the Commission requires a further disaggregation of LECs' service offerings for price cap purposes. In fact, the creation of a separate service category for each service offering, as AT&T suggests, would virtually stand the Commission's price cap policy on its head.

Furthermore, the need for greater pricing flexibility has become more and more evident as the access arena has become more and more competitive. As BellSouth has stated

on numerous occasions in other proceedings, the Commission should engage in a comprehensive review of its rules in order to better reflect the new environment, and revision of the Commission's price cap rules should be a fundamental part of that review. Until then, however, LECs have the flexibility to place a new service offering such as the LIDB per query charge in the transport category and are not required to create a new service category.

V. Conclusion

In summary, BellSouth has addressed the relevant issues designated by the Commission in this investigation proceeding and has demonstrated that there is no need for any further investigation or any revisions to be made to its 1993 annual access filing. Therefore, the Commission should conclude this investigation and terminate the related accounting order forthwith, without imposing any further requirements upon BellSouth.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sheila Bonner, hereby certify that copies of the foregoing REBUTTAL were mailed, first-class, postage prepaid, to those persons listed below.

This the 10th day of September, 1993.

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